

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.3097/Chny/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

The ACIT, Corporate Circle – 5(2), Chennai -34.	Vs	M/s. Poorvika Mobiles Pvt. Ltd., No.30, Arcot Road, Kodambakkam, Chennai – 24.
		PAN: AAACP9975G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकर अपील सं./I.T.A.No.3098/Chny/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

The ACIT, Corporate Circle – 5(2), Chennai -34.	Vs	Shri Uvaraj Natarajan, No.33, 2 nd Street, Taylors Estate, Kodambakkam, Chennai – 24.
		PAN: AAAPU6683R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Smt. Vijayaprabha, JCIT
प्रत्यर्थी की ओर से/Respondent by	:	Dr. L. Natarajan, CA

सुनवाई की तारीख/Date of hearing	:	10.05.2018
घोषणा की तारीख /Date of Pronouncement	:	12.06.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the assesseees are directed against the orders passed by the Ld. Commissioner of Income Tax (Appeals) - 3, Chennai in the case of M/s. Poorvika Mobiles Pvt. Ltd., and Shri Uvaraj Natarajan Managing Director of the company M/s. Poorvika

Mobiles Pvt. Ltd., in ITA No.123/16-17/A-3 & 220/16-17/A-3 respectively both dated 30.08.2017 for the assessment year 2013-14 passed U/s. 271(1)(c) of the Act. Since the issues involved in both the appeals are identical and pertains to related parties, they are taken up together and disposed off by this common order.

2. The Revenue have raised three identical grounds in both the appeals however the crux of the issue is that the Ld.CIT(A) has erred in deleting the penalty levied by the Ld.AO U/s.271(1)(c) of the Act.

3. The brief facts of the case are that the assessee Shri Uvaraj Natarajan is the Managing Director of the assessee company M/s. Poorvika Mobiles Pvt. Ltd., which is engaged in the business of selling mobile phones. A survey was conducted U/s.133A of the Act in the case of M/s. Poorvika Mobiles Pvt. Ltd. on 24.09.2013. During the course of survey proceedings, Shri Uvaraj Natarajan has disclosed an additional income of Rs.1,50,00,000/- and M/s. Poorvika Mobiles Pvt. Ltd., had disclosed an additional income of Rs.3 crores for the assessment year 2013-14. Subsequently both the assessee's case was reopened. Subsequently M/s. Poorvika Mobiles Pvt. Ltd., filed a

revised return on 25.02.2015 wherein additional income of Rs.3 crores was admitted. Similarly Shri Uvaraj Natarajan also filed a revised return on 27.05.2015 admitting the additional income of Rs.1,50,00,000/-. Thereafter the Ld.AO invoked the provisions of Section 271(1)(c) of the Act and levied penalty on the additional income declared by both the assesseees amounting to Rs.97,33,500/- in the case of M/s. Poorvika Mobiles Pvt. Ltd., and Rs.48,66,750/- in the case of Shri Uvaraj Natarajan.

4. On appeal, the Ld.CIT(A) allowed the matter in favour of both the assesseees following the decision of the Tribunal in the case of the related assessee Smt. Kanni Uvaraj in ITA No.3141/Mds/2016 for the relevant assessment year order dated 02.08.2017, wherein the facts of all the three cases are identical, by holding as follows:-

4.3. I have considered the submissions of the Ld.AR and perused penalty order passed by the AO. I have also perused order of Hon'ble ITAT in the case of Mrs. Kanni Uvaraj on same issue. The operational part of Hon'ble ITAT order is reproduced as under:

We have heard the rival submissions and carefully perused the materials available on record. From the facts of the case, it is apparent that the assessee has admitted the additional income in order to avoid confrontation with the Revenue. Further, it is apparent that the Ld.AO had intimidated the assessee in admitting the income by citing the residential building constructed by the assessee's spouse. While doing so, the ld. assessing officer did not even value the residential building constructed by the assessee's spouse, but simply estimated by surmises and conjectures. In similar circumstances, this Bench of the Tribunal in ITA

No.1009/Mds./2016 in the case of M/s.Trisha Krishnan vide order dated 06.09.2016, as pointed out by the Id.AR, had held that in a situation where addition is made which is accepted by the assessee in order to avoid confrontation with the Revenue, then penalty cannot be valid. In the case of the assessee also, it appears that the assessee had agreed for the addition in order to avoid protracted litigation and avoid confrontation with the Revenue. Further, we are reminded of the decision of the Hon'ble Supreme Court in the case of Dilip N. Shroff's reported in 291 ITR 519(SC), wherein it was held that only because the opinion of the registered valuer is not accepted or some other expert gives another opinion, is not by itself sufficient for arriving at a conclusion that the assessee had furnished inaccurate particulars attracting penalty u/s. 271(1)(c) of the Act. Primary burden of proof of furnishing inaccurate particulars of income is on the revenue and it is only on discharge of primary burden that the secondary burden of proof would shift on the assessee. In the case of the assessee, the addition of Rs.1.5 crores is made only on the presumption on the value of the residential building constructed by the spouse of the assessee and not even by the valuation of the Id.DVO. The assessee had also simply accepted the additional income suggested by the Id. assessing officer in order to avoid further complications. Therefore, we are of the considered view that in the case of the assessee the levy of penalty is not warranted.

On perusal of the Hon'ble ITAT's order, I found that the contentions of the Ld.AR are found correct in so far as the issue involved in the appeals.

4.4. Respectfully following Hon'ble ITAT's order in the case of Mrs. Kanni Uvaraj who happens to be another Director of the company, M/s. Poorvika Mobiles Private Limited, and also issue is the same in all the three appeals, I direct the AO to follow the directions given in the Hon'ble ITAT's order in the case of Mrs. Kanni Uvaraj and delete the penalty levied in the hands of the appellant."

5. The Ld.DR could not controvert to the above facts while as the Ld.AR relied on the orders of the Ld.CIT(A) and the Tribunal.

6. We have heard the rival submissions and carefully perused the materials on record. The facts in all the three cases viz., Smt. Kanni Uvaraj, Shri Uvaraj Natarajan and M/s. Poorvika Mobiles Pvt. Ltd., are identical and pertains to related parties and the same is

not in dispute. In the case of Smt. Kanni Uvaraj, the Tribunal in ITA No.3141/Mds/2016 vide Order dated 02/08/2017 has deleted the penalty for the relevant assessment year relying on the decision of the Tribunal in the case of Ms.Trisha Krishnan in ITA No.1009/Mds/2016 Order dated 06.09.2016 as well as the decision of the Hon'ble Apex Court in the case Dilip N Shroff reported in 291 ITR 510. Following that decision of the Tribunal, the Ld.CIT(A) finding the facts to be identical in the related case of the assesseees Shri Uvaraj Natarajan and M/s. Poorvika Mobiles Pvt. Ltd., had deleted the penalty. In this situation, we do not find it necessary to interfere with the order of the Ld.CIT(A) in the case of both the assesseees viz., Shri Uvaraj Natarjan and M/s. Poorvika Mobiles Pvt. Ltd.. Accordingly the Order of the Ld.CIT(A) in both the appeals are upheld.

7. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on the 12th June, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 12th June, 2018

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF